IN THE IOWA DISTRICT COURT FOR DALLAS COUNTY

STEVE HELM, in his official capacity as the Dallas County Assessor, and DALLAS COUNTY BOARD OF REVIEW, **Petitioner,** **vs.** **STATE OF IOWA PROPERTY ASSESSMENT APPEAL BOARD,** **Respondent.**	**No. CVCV034480** **RULING ON PETITION FOR JUDICIAL REVIEW**

The above-captioned matter came before the Court for hearing on June 5, 2009. Petitioner was represented by Brett Ryan. Respondent was represented by Jessica Braunschweig-Norris and Curtis Swain. Following oral argument and upon review of the court file, administrative record, and applicable law, the Court enters the following:

STATEMENT OF THE CASE

Angela Wenell timely appealed the January 1, 2007 assessment of her residential single-family home located at 26085 278th Place, Dallas Center, Iowa, to the Dallas County Board of Review ("Board of Review"), claiming that the property was inequitably assessed and over assessed. The Board of Review denied the protest. On July 31, 2007, Wenell appealed to the Property Assessment Appeal Board ("Appeal Board") and asserted the same claims. On April 30, 2008, the Appeal Board determined that Wenell presented persuasive evidence to support the claim that her property assessment was inequitable and modified the assessment. On May 19, 2008, the Board of Review filed an Application for Rehearing with the Appeal Board. The Appeal Board denied the hearing but issued an order on June 6, 2008, responding to the issues raised by

the Board of Review. On June 25, 2008, the Board of Review filed a Petition for Judicial Review with this Court.

FINDINGS OF FACT

The decision from which the Board of Review appeals was based upon the following facts:

Angela and Brian Wenell own a residential single-family home located at 26085 278th Place in Dallas Center, Iowa. As of January 1, 2007, the home was assessed at $318,480, with a land value of $60,450 and a dwelling value of $258,030. Angela Wenell appealed the assessment to the Board of Review alleging two grounds for appeal: that the property was inequitably assessed and that the property was over assessed. The Board of Review denied the protest. Wenell appealed to the Appeal Board asserting the same claims.

A hearing was held before the Appeal Board on March 5, 2008. Wenell asserted that her property was over assessed; specifically the land portion was over assessed based on the assessments of nearby properties. She did not challenge the dwelling value. Wenell presented evidence of four comparable properties in the area surrounding her home. These parcels were assessed using a common assessment method in which the first acre of the parcel is valued at a higher rate than additional acres. The property record cards for these four parcels indicated that the 1993 value of the first acre of the properties ranged from $20,000 to $50,000 with a median value of $30,000. The first acre of Wenell's property was valued at $35,000. The additional acres of the comparable properties were assessed at values ranging from $1,000 per acre to $3,000 per acre with a

median value of $2,000 per acre. Wenell's remaining acres were valued at $3,000 by the assessor.

The Board of Review provided a summary statement in response to Wenell's evidence to support the equity of the assessment. This statement provided property records for comparable sales. The Appeal Board noted that none of the properties were in the vicinity of Wenell's property and that the properties were not useable as comparables. Dallas County Assessor Steve Helm testified on behalf of the Board of Review and testified that the dwelling value of Wenell's property might be low because it was assessed close to the cost of construction value and that the land value might be high, but this leads to an accurate assessed value. He further testified that the last mass appraisal of the area of the county was in 1993 and a revaluation is scheduled using the upcoming Iowa Real Property Manual. Mr. Helm testified that he applied a multiplier of 1.468 to the 1993 land assessed values to arrive at the 2007 land assessments to reflect past state equalization order increases. Using this multiplier he arrived at the assessed dwelling value of $258,030 and the assessed land value of $60,450 for a total assessment of $318,480.

In its decision dated April 30, 2008, the Appeal Board determined that the property was inequitably assessed. The Appeal Board modified Wenell's assessment and determined that the value as of January 1, 2007, should be $308,100, with the land value assessed at $50,070 and the dwelling value assessed at $258,030. On May 19, 2008, the Board of Review filed an Application for Rehearing requesting that the Appeal Board reconsider its decision. The Board of Review asserted that a taxpayer cannot appeal only one element of her overall assessment, that Wenell did not prove a prima facie case of

inequity in the assessment, and that the Appeal Board's finding of inequity was unsupported by the evidence and contrary to Iowa law. On June 25, 2008, the Appeal Board responded to the Board of Review's allegations but maintained its same determination from its April 30, 2008 order. The Appeal Board held that Wenell did appeal the overall assessment and that it was in compliance with Iowa law in determining the new assessed value of the property as a whole and attributing a portion of that value to the land and to the building. It further held that it properly found that Wenell had provided evidence to support its claim that the property was inequitably assessed, and that the Appeal Board properly determined that property was inequitably assessed.

STANDARD OF REVIEW

On judicial review of an agency action, the district court functions in an appellate capacity. *Greater Community Hospital v. Public Employment Relations Board*, 553 N.W.2d 869, 871 (Iowa 1996). Judicial review of a final agency action is governed by application of standards set out in Iowa Code section 17A.19. The district court's review is limited to corrections of errors of law and is not de novo. *Second Injury Fund v. Klebs*, 539 N.W.2d 178, 179-80 (Iowa 1995). The court has no original authority to declare the rights of the parties. *Office of Consumer Advocate v. Iowa State Commerce Comm'n*, 432 N.W.2d 148, 156 (Iowa 1988). Nearly all disputes in the field of administrative law are won or lost at the agency level. *Iowa-Illinois Gas and Elec. Co. v. Iowa State Commerce Comm'n*, 412 N.W.2d 600, 604 (Iowa 1987). Judgment calls are to be left to the agency. *Burns v. Board of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993).

"The court may affirm the agency action or remand to the agency for further proceedings." Iowa Code § 17A.19(10). "The court shall reverse, modify, or grant other

appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced" for any of the fourteen grounds listed under Iowa Code section 17A.19(10). Specifically, the court may reverse, modify or grant appropriate relief, when an agency determination of fact clearly vested in the discretion of the agency is not supported by substantial evidence in the record. Iowa Code § 17A.19(10)(f). The court must view the record as a whole when determining whether the agency's finding is based on substantial evidence. Iowa Code § 17A.19(10)(f).

"'Substantial evidence' means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." Iowa Code section 17A.19(10)(f)(1).

> Evidence is substantial when a reasonable person could accept it as adequate to reach the same findings. ... Conversely, evidence is not insubstantial merely because it would have supported contrary inferences. ... The ultimate question is not whether the evidence supports a different finding but whether the evidence supports the findings actually made.

Reed v. Iowa Dept. of Transp., 478 N.W.2d 844, 846 (Iowa 1991).

While "'courts must not simply rubber stamp the agency fact finding without engaging in a fairly intensive review of the record to ensure that the fact finding is itself reasonable' . . . evidence is not insubstantial merely because it would have supported contrary inferences." *Wal-Mart Stores, Inc. v. Caselman,* 657 N.W.2d at 499 (*quoting, in part*, Arthur E. Bonfield, *Amendments to Iowa Administrative Procedure Act*) (1998) at 68 (1998)); *U. of Iowa Hospitals and Clinics v. Waters*, 674 N.W.2d 92, 95-96 (Iowa 2004). Where the evidence is in conflict or where reasonable minds might disagree about

the conclusion to be drawn from the evidence, the court must give appropriate deference to the agency's findings. *Freeland v. Emp. Appeal Bd.*, 492 N.W.2d 193, 197 (Iowa 1992). "The ultimate question is not whether the evidence supports a different finding, but whether the evidence supports the findings actually made." *Munson v. Iowa Dep't of Transp.*, 513 N.W.2d 722, 723 (Iowa 1994). The possibility of drawing two inconsistent conclusions from the evidence does not mean the agency's decision is not supported by substantial evidence. *Robbennolt v. Snap-On Tools Corp.*, 555 N.W.2d 229, 233 (Iowa 1996).

Finally, the court shall reverse, modify or grant appropriate relief to a petitioner, if the agency's decision was unreasonable, arbitrary, capricious or an abuse of discretion. Iowa Code § 17A.19(10)(n). An agency's action is "arbitrary" or "capricious" when the agency acts "without regard to the law or facts of the case." *Dico, Inc. v. Iowa Employment Appeal Bd.*, 576 N.W.2d 352, 355 (Iowa 1998)(citation omitted). "An agency action is 'unreasonable' when it is 'clearly against reason and evidence.'" *Soo Line R.R. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 688-89 (Iowa 1994)(*quoting Frank v. Iowa Dep't of Transp.*, 386 N.W.2d 86, 87 (Iowa 1986)). "An abuse of discretion occurs when the agency action 'rests on grounds or reasons clearly untenable or unreasonable.'" *Dico, Inc.*, 576 N.W.2d at 355 (*quoting Schoenfeld v. FDL Foods, Inc.*, 560 N.W.2d 595, 598 (Iowa 1997)).

DISCUSSION

I. *Analysis*

Iowa Code § 441.37 provides in part:

> 1. Any property owner or aggrieved taxpayer who is dissatisfied with the owner's or taxpayer's assessment may file a protest against such

assessment with the board of review on or after April 16, to and including May 5, of the year of the assessment....Said protest must be confined to one or more of the following grounds:

a. That said assessment is not equitable as compared with assessments of other like property in the taxing district. When this ground is relied upon as the basis of a protest the legal description and assessments of a representative number of comparable properties, as described by the aggrieved taxpayer shall be listed on the protest, otherwise said protest shall not be considered on this ground.

b. That the property is assessed for more than the value authorized by law, stating the specific amount which the protesting party believes the property to be overassessed, and the amount which the party considers to be its actual value and the amount the party considers a fair assessment.

Iowa Code § 421.1A provides in part:

4. The property assessment appeal board may do all of the following:
   a. Affirm, reverse, or modify a final decision, finding, ruling, determination, or order of a local board of review.

Iowa Code § 441.21(1) provides in part:

a. All property subject to taxation shall be valued at its actual value which shall be entered opposite each item, and, except as otherwise provided in this section, shall be assessed at one hundred percent of its actual value, and the value so assessed shall be taken and considered as the assessed value and taxable value of the property upon which the levy shall be made.
b. The actual value of all property subject to assessment and taxation shall be the fair and reasonable market value of such property except as otherwise provided in this section.

Iowa Code § 441.21(2) provides in part:

In the event market value of the property being assessed cannot be readily established in the foregoing manner, then the assessor may determine the value of the property using the other uniform and recognized appraisal methods including its productive and earning capacity, if any, industrial conditions, its cost, physical and functional depreciation and obsolescence and replacement cost, and all other factors which would assist in determining the fair and reasonable market value of the property but the actual value shall not be determined by use of only one such factor.

A. Separate component argument

The Board of Review contends that the Appeal Board erred in finding that the Wenell property was over assessed. It specifically argues that a property tax appeal is not allowed if it only challenges one component of the property tax assessment. The Appeal Board contends that Wenell did challenge the valuation as a whole and that the Appeal Board's finding of an over assessment is correct and based on substantial evidence.

The Board of Review relies on two Iowa cases to support its contention that a valuation as a whole must be challenged rather than only a portion. It cites to *Deere Manufacturing Company v. Zeiner* and *White v. Board of Review of Polk County* to support its position that the Appeal Board must look to whether the assessment as a whole is just and equitable rather than whether one portion of the assessment is incorrect. *White v. Board of Review of Polk County* 244 N.W.2d 765 (Iowa 1976); *Deere Manufacturing Company v. Zeiner*, 247 Iowa 1364, 78 N.W.2d 527 (1956). In *Deere*, the taxpayer protested the assessment of commercial property. *Deere,* 78 N.W.2d at 529. The assessment was composed of a value assigned to the land and a value assigned to the building. *Id.* The building valuation included machinery, equipment, tools, dies and jigs. *Id.* The taxpayer protested the assessment claiming that it was excessive and inequitable, but challenged only the value of the building, did not challenge the valuation of the machinery, jigs and dies, and chose not to divulge the value of the machinery to the defendant when requested. *Id.* The Court stated that it was necessary to look at "whether the assessment of the subject as a whole is just and equitable." *Id.* at 531. The Court went on to note that since "the plaintiff's machinery was not assessed separately the valuation…is to be treated merely as an intermediate step in ascertaining the value of plaintiff's building as a whole." *Id.*

Deere is distinguishable from the present situation. In *Deere,* the taxpayer was attempting to have an assessment lowered by leaving out the machinery valuation from the building portion of the assessment. The Court determined that it could not do so because the machinery must be considered a part of the entire valuation of the building. It did not appear to be saying that a taxpayer may not challenge one portion of the assessment. In the present case, Wenell did not attempt to leave out a portion of the assessment of her property. She instead challenged the valuation of the land portion of the assessment.

In *White v. Board of Review of Polk County* the taxpayer protested an assessment because it included a building which was not in existence in the years it was assessed. *White,* 244 N.W.2d at 769. The Court noted that it is necessary to look at whether the assessment of the whole subject is just and equitable. It then stated that "inclusion of a nonexistent item in an assessment should not render that assessment void per se if the valuation as a whole is correct." *Id.* Again, it does not appear that the Court intended to prohibit a taxpayer from appealing an assessment if the taxpayer believes that one portion is over assessed, but rather that if the assessment as a whole is correct the taxpayer will not prevail. In the present case, Wenell disagreed with the whole 2007 assessment of her property, arguing that it was incorrect as a result of the land portion being valued too high. Because she protested the entire value as being over assessed, Wenell correctly appealed her tax assessment and the Appeal Board properly considered it. Further, the Board of Review's argument that Wenell was not protesting her whole assessment does not seem logical. Under that line of reasoning, if she was not protesting the entire valuation, she would have to ask for the amount of the excess valuation of the land to be

applied to the dwelling. She has not asserted that the value assigned to the dwelling was too low, and therefore this argument would not make sense in this situation.

There is substantial evidence in the record to support the Appeal Board's finding of an over assessment on the Wenell's property. The Appeal Board noted that there was no evidence to suggest that the value assigned the dwelling was too low. It found that the comparables introduced by Wenell were adequate to show that her property was over assessed in relation to the comparable properties and therefore reduced the assessment value to $308,100 by lowering the value assigned to the land. This finding was supported by substantial evidence and the Appeal Board did not err in reaching this conclusion.

B. Inequity argument

The Board of Review argues that the Appeal Board erred as a matter of law in finding inequity in the assessment of Wenell's property. It contends that Wenell did not produce enough evidence to support a finding of inequity and therefore the Appeal Board lacked sufficient evidence to grant Wenell any relief. The Board of Review further contends that if there had been sufficient evidence the proper relief would have been a reduction in the assessment to the median sales ratio set forth in the Sales Ratio Study by the Department of Revenue. The Appeal Board argues that it received sufficient evidence and applied Iowa case law and administrative rules to find that the property was inequitably assessed and that the proper remedy was to correct the valuation.

The Iowa Supreme Court has stated that "the inequity ground is a means of establishing that the market value determined by the assessor is greater, on a comparison basis, than the market value that should have been found." *Riso v. Pottawattamie Bd. of Review,* 362 N.W.2d 513, 518 (Iowa 1985). "The gist of this ground is that the property

at issue is assessed higher proportionately than similar property in the area." *Id.* at 517. In *Maxwell v. Shrivers* the Iowa Supreme Court set forth the following factors to prove inequity:

> (1) that there are several other properties within a reasonable area similar and comparable to his; (2) the amount of the assessments on those properties; (3) the actual value of the comparable properties; (4) the actual value of his property; (5) the assessment complained of; and (6) that by a comparison his property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.

Maxwell v. Shrivers, 257 Iowa 575, 579-80, 133 N.W.2d 709, 711 (1965). While the Board of Review contends that the Appeal Board was required to use this method the Supreme Court has not consistently utilized these factors in later cases. *See Eagle Food Centers, Inc. v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860 (Iowa 1993). In *Eagle Food Centers*, the Court did not apply these factors and instead used a different recognized appraisal method to ascertain the value of the property since there were no sales of comparable properties. *Id.* It allowed a showing of inequity to be demonstrated by a showing that the property was treated differently than comparable properties. *Id.*

The Appeal Board did not use the six factors set forth in Maxwell, noting that it was not required to do so and that it disagreed with the Board of Review's assertion that it was required to do so. This Court finds that the six factors are not the only way to demonstrate inequity in an assessment. The Appeal Board found that the comparable properties introduced by Wenell were adequate and determined that that the assessor had used a different method for valuing the Wenell property or used a method that was not uniformly applied to the comparable properties. The Appeal Board found that Wenell met her burden of establishing the properties were comparable because they were on the

same gravel road as the Wenell property in a rural area of the county. Wenell also introduced two additional properties which contained sales prices, but because the sales had occurred after the January 1, 2007, assessment date and did not contain further related assessment information, the Appeal Board found it could not use those properties. However, it found that the other four properties were useful and comparable. The Appeal Board rejected the properties that the Board of Review introduced as comparable properties because they were not in the vicinity of Wenell's property. The Appeal Board instead chose to give weight to Wenell's comparable properties and used them as comparable properties in determining an inequitable assessment.

The Appeal Board noted that the land portion of the property assessment exceeded the median assessed value for the first acre and the median assessed value for the comparable properties. It determined that despite the assessor's testimony that he had utilized the same method to measure the comparable properties that he did not do so because the numbers used to determine the value of the Wenell land were much higher. It then used the median assessed value and the assessor's 1.468 multiplier to come up with a new land value of $50,088 and a total adjusted assessment of $308,100.

The Board of Review contends that even if the Appeal Board's finding of inequity was allowed by law, the proper method for determining a reduction in Wenell's assessment would have been to use a median ratio of market value to assessed value. In supporting its claim the Board of Review cites to *Metropolitan Jacobson Development v. Board of Review of the City of Des Moines*, 524 N.W.2d 189 (Iowa 1994). In that case, the Supreme Court reviewed a Board of Review's decision which decreased an assessment of commercial property. It agreed that the assessments were excessive but

found that it should have used a different ratio to arrive at the proper assessed value. It used ratios prepared by the Department of Revenue that were introduced as evidence to determine the new assessment values.

The sales ratio method was utilized in *Metropolitan* because the Board of Review had introduced ratios as evidence which the Court then used to calculate the new assessment. In the present case, there was no such introduction of sales ratios which the Appeal Board could have used to determine the appropriate value. Instead, the Appeal Board determined that despite the assessor's testimony that he had used the same method on the Wenell's property and the comparable properties, he had not. It then recalculated the assessment for the Wenell assessment in the same manner that the other properties had been computed, and adjusted the assessment accordingly.

After reviewing the record as a whole, this Court finds that there was substantial evidence in the record to support the Appeal Board's findings. The Appeal Board found that the comparable properties introduced by Wenell were adequate and thus determined that that the assessor had used a different method for valuing the Wenell property or used a method that was not uniformly applied to the comparable properties. It then applied the formula to determine then correct assessment for the property.

C. Conclusion

The Board's decision that Wenell met her burden of proving that her land was inequitably assessed and over assessed was supported by substantial evidence. It correctly followed Iowa law in making its findings. A final agency decision "should be affirmed by the district court … when there is no error of law and the decision is supported by substantial evidence in the record as a whole." *Aalbers v. Iowa Dept. of Job*

Service, 431 N.W.2d 330, 334 (Iowa 1988). Therefore, the decision by the Iowa Property Assessment Appeal Board is affirmed.

ORDER

IT IS THE ORDER OF THE COURT that the Ruling on Appeal of the Iowa Property Assessment Appeal Board is hereby **AFFIRMED.**

SO ORDERED this day of July, 2009.

GREGORY A. HULSE
Judge, Fifth Judicial District of Iowa

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